

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Rules and Regulations Implementing the |) | CG Docket No. 02-278 |
| Telephone Consumer Protection Act of 1991 |) | |
| |) | |
| Broadnet Teleservices LLC |) | |
| Petition for Declaratory Ruling |) | |
| |) | |
| National Employment Network Association |) | |
| Petition for Declaratory Ruling |) | |
| |) | |
| RTI International |) | |
| Petition for Declaratory Ruling |) | |

Reply Comments in Favor of A Stay Pending Reconsideration

Filed by:

Greenwald Davidson Radbil PLLC

Introduction

Greenwald Davidson Radbil PLLC, as Court-appointed class counsel in several class actions under the Telephone Consumer Protection Act, respectfully requests that the Federal Communications Commission (“Commission”) grant the *Petition for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration* filed by the National Consumer Law Center (“NCLC”)¹ and 50 other legal aid and advocacy organizations regarding the Commission’s declaratory ruling relating to the petitions of Broadnet Teleservices, LLC, National

¹ Petition of National Consumer Law Center et al. for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration, CG Docket No. 02-278, (filed July 26, 2016) <https://www.fcc.gov/ecfs/filing/10726059270343> (Petition).

Employment Network Association (“NENA”), and RTI International (“RTI”), released July 5, 2016.²

The Commission’s Broadnet Ruling is harmful to consumers, with the potential for immunizing federal contractors from liability for egregious violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. We submit these comments to highlight a specific example of the serious potential for harm that could result from the Broadnet Ruling if a stay is not issued.

I. The facts of a currently pending TCPA class action illustrate the tremendous harm consumers may face as a result of the Broadnet Ruling.

The facts and circumstances in a now-pending case illustrate exactly why the Broadnet Ruling could have a devastating impact on consumers.³

In September 2014, an entity collecting federally backed student loans (the “Company”) began placing autodialed⁴ calls to the cellular telephone of a resident of a Midwest state (“Mr. Smith”).⁵ Company did so in connection with its efforts to collect a student loan debt owed by someone other than Mr. Smith. Significantly, Company conceded as part of the litigation that at no point did it have a business relationship with Mr. Smith, that it never intended to reach Mr. Smith when placing calls to his cellular telephone number, and that it never obtained, or even attempted to obtain, Mr. Smith’s permission to place autodialed calls to his cellular telephone number.

² Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Petitions for Declaratory Ruling by Broadnet Teleservices LLC, NENA, RTI, CG Docket No. 02-278, Declaratory Ruling, FCC 16-72, (July 5, 2016) (“Broadnet Ruling”).

³ To be abundantly clear, we cite to this matter for illustrative purposes only. We do not concede—and strongly dispute—that the Broadnet Ruling shields the debt collector at issue from TCPA liability in that case.

⁴ In this matter, Company does not dispute that the calls at issue were made via an automatic telephone dialing system, as defined by the TCPA.

⁵ To protect the plaintiff’s privacy, we refer to him by the pseudonym Mr. Smith.

Knowing this, after receiving autodialed calls from Company, Mr. Smith called Company back and notified one of its agents that his cellular telephone number did not belong to the person Company was attempting to reach. During this conversation—which Company recorded—Company agreed to remove Mr. Smith’s cellular telephone number from its system.⁶ Company, however, failed to do so, and continued to place autodialed calls to Mr. Smith’s cellular telephone number notwithstanding being told it was calling the wrong number and to stop calling.

So Mr. Smith again called Company and informed one of its agents that it continued to place autodialed calls to his telephone number despite his previous requests that it not do so. During this conversation Company not only again agreed to remove Mr. Smith’s cellular telephone number from its system, but also assured Mr. Smith that he would not receive any more calls from it.

In line with the conversations between Company and Mr. Smith, Company included, on three separate occasions, a “wrong number” designation in its records for Mr. Smith’s cellular telephone number. No matter, and despite having multiple “wrong number” designations on the account with Mr. Smith’s cell phone number, Company placed scores of additional, autodialed calls to Mr. Smith’s cellular telephone number after Mr. Smith notified Company that it had the wrong number.

Disconcertingly, Mr. Smith’s experience with Company is not unique. In fact, discovery reveals that Company placed autodialed calls to the cellular telephones of consumers throughout the country *after* a date on which Company included in its system a wrong number code for each of the telephone numbers. In other words, Company continued to autodial the cellular telephone numbers of numerous consumers after it had been made aware by those consumers that it was not

⁶ Per its policy to record and maintain copies of each conversation one of its agents has with a person to whom he or she speaks, Company recorded and maintained each of the conversations one of its agents had with Consumer.

calling the persons it was intending to call. And Company did this despite its understanding that if a person informs one of Company's agents that it reached a wrong number, Company should stop placing calls to that number.

Importantly, these autodialed calls were not made to persons who actually owed a debt guaranteed by the United States. Rather, these calls were the product of Company calling the wrong number, being specifically informed it was calling the wrong number, notating in its system that it was calling the wrong number, and then continuing to autodial that number.

With this in mind, any interpretation of the term "person" under the TCPA that completely excludes collectors of federally backed student loans from its reach would leave consumers like Mr. Smith—who repeatedly informed a debt collector attempting to collect a federally backed student loan that the number it was calling was the wrong number, but who nonetheless continued to receive autodialed calls from the debt collector intended for someone other than him—potentially without recourse and encourage entities to continue, and likely expand, autodialing campaigns to known wrong numbers, all at the expense of consumers nationwide.⁷

II. Debt collectors who collect federally backed debts cannot be given *carte blanche* to violate the TCPA.

The NCLC Petition should be granted because the Broadnet Ruling did not adequately consider its potential impact on the consumer privacy interests the TCPA was enacted to protect. Although the Broadnet Ruling found that a government contractor exemption "might lead to more unwanted calls," the Commission did not sufficiently appreciate the disastrous impact on consumers' privacy rights, in light of the extremely broad range of individuals, corporations, and

⁷ To be abundantly clear, we cite to the *Smith* matter for illustrative purposes only. We do not concede—and strongly dispute, for various reasons—that the Broadnet Ruling in and of itself shields Company from TCPA liability in that case.

other parties who contract with the federal government and who likely will advocate that they are not subject to the TCPA.

Government debt collectors are a prime example. And the facts and circumstances of Mr. Smith's case explain exactly why the TCPA is necessary to protect consumers from repeated, unwanted autodialed calls to their cellular telephones—even after they specifically inform the caller that it is calling a wrong number and to stop calling. And while Mr. Smith's case is just one example, one need only consider the exorbitant number of complaints the Commission receives each year to see that consumers desperately need their interests in preventing autodialed and other unwanted calls protected in the strongest terms. Accordingly, the NCLC Petition should be granted.

III. Absent a stay of the Broadnet Ruling, consumers like Mr. Smith face the prospect of irreparable harm.

A request for a stay is evaluated based on four factors: (1) the likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is not granted; and (4) whether the issuance of the order will further the public interest. Each of these factors is present in this case. And while all four factors strongly militate in favor of a stay, we focus on the serious harms consumers like Mr. Smith could face absent a stay.

In short, debt collectors who place autodialed calls regarding debts alleged to be owed to the federal government will assert (wrongly) that the Broadnet Ruling provides them with full immunity from TCPA claims. While we strongly disagree that this interpretation is in accord with the text of the TCPA, and further disagree that Company qualifies as an agent of the government, contrary holdings by the courts would leave consumers like Mr. Smith, who received repeated autodialed calls on their cellular telephones even *after* notifying the caller that it was calling the wrong number, without recourse. These flagrant violations of the TCPA must be curtailed, not

encouraged. And the potentially wide-ranging “get-out-of-jail-free” pass that the Broadnet Ruling could provide would only exacerbate the scourge of robocalls that consumers already receive and detest.

As such, and to ensure consumers’ privacy interests are protected, we strongly encourage the Commission to grant the NCLC Petition.

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Respectfully Submitted,

/s/ Aaron D. Radbil

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